

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 610 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARIJAN HARIBHAI BABUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR RM PARMAR for Petitioner

Shri H L Jani, APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 25/09/98

ORAL JUDGEMENT

By way of this Special Criminal Application, the petitioner has challenged the order of externment dated 30.4.1998 passed by the Sub-Divisional Magistrate, Junagadh whereby the petitioner has been asked to remove himself from the Districts of Junagadh, Porbandar, Amreli, Rajkot City and Rajkot (Rural) for a period of

two years. The order has been confirmed in appeal by order dated 6.6.98 passed by the Dy.Secretary, Home Department.

2. It is contended by the learned Advocate for the petitioner that the subjective satisfaction arrived at by the externment authority is vitiated on account of non-application of mind. It is submitted that while the externment authority has recorded satisfaction that no witnesses are coming forward to give evidence against the petitioner by reason of apprehension on their part as regard the safety of their person or property, the record shows that the witnesses have come forward to give evidence against the petitioner. The learned Advocate placed reliance on an unreported decision of this Court rendered in Special Criminal Application No.484/98 decided on 22.7.98.

3. I have gone through the said unreported decision and also perused the relevant materials. In my view the said decision is of no assistance to the petitioner in the facts of the case. Simply because some witnesses have come forward to give evidence, it cannot be said that the subjective satisfaction of the externment authority is not based on consideration of the entire material, and therefore, it is vitiated because of non-application of mind. Subjective satisfaction is to be arrived at on formation of opinion based on the material indicating the conduct of the externnee and the circumstances of the case. In the instant case, it cannot be said that there is total non-application of mind on the part of the externing authority. In view of this, I find no merit in the contention raised by the petitioner.

4. However, considering all facts and circumstances of the case, in my view, ends of justice would meet, if the petitioner is asked to furnish a personal bond and also a security bond to assure that he will conduct himself in a manner to provide peace and keep himself away from violence and alarm.

5. In view of the aforesaid, this Special Criminal Application is partly allowed. It is directed that the order of externment shall be substituted as follows:

The petitioner shall furnish a personal bond in the sum of Rs.5,000/- and a surety bond in the like amount to the satisfaction of the Sub-Divisional Magistrate, Junagadh, for keeping peace and keep himself away from violence and

alarm for a period of two years. The period of two years shall be reckoned from 30.4.1998. Four weeks time is allowed to comply with the aforesaid directions.

Rule is partly made absolute to the aforesaid extent.

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msp.